

C.W.P.No. 15906 of 2006

Date of decision: 26-2-2007

**Baldev Singh Vs. State of Punjab**

**CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL  
HON'BLE MR. JUSTICE AJAI LAMBA**

Present: Shri Arvind Kashyap, Advocate,  
for the petitioner

Shri C.M.Munjal, Sr. Additional Advocate General, Punjab

**K.S.GAREWAL,J.**

Baldev Singh is the petitioner in this Civil Writ Petition under Article 226 of the Constitution. He was elected Sarpanch of Panchayat Manolian, Block Mahilpur, District Hoshiarpur from 1998 to 2003. Thereafter he was reelected as Panch and is continuing as a member of the Panchayat. The present Parpanch of the Panchayat lodged a complaint against the petitioner on July 17, 2004, raising various allegations regarding misuse of panchayat funds during his sarpanchship, income from auction of trees and removal of sand was not shown in the records, three Marlas of land was purchased which was not required and money spent on construction was not properly accounted for. After a preliminary inquiry Additional Deputy Commissioner (Development) Hoshiarpur was appointed as a Inquiry Officer. The Inquiry Officer vide report dated June 12, 2006 Annexure P-1 concluded that Rs. 78445/- was recoverable from the petitioner on various accounts.

The report of the Additional Deputy Commissioner was sent to Director, Panchayat Punjab, Chandigarh with the recommendation that

action be taken under Section 216 of the Punjab Panchayati Raj Act, 1994.

Director, Panchayat, Punjab wrote letter to Block Development and Panchayat Officer, Mahilpur on August 28, 2006 (Annexure P-2) enclosing a copy of the Additional Deputy Commissioner's order and directed the Block Development and Panchayat Officer to take action under Section 216 of the Punjab Panchayati Raj Act. Thereupon notice was issued notice to the petitioner on September 11, 2006 (Annexure P-3) asking him to deposit Rs. 78445/- in the Panchayat account within a week. This petition was filed on September 29, 2006 challenging the order passed by Director, Panchayat (Annexure P-2) and by the Block and Development Officer (Annexure P-3).

Section 216 of the Punjab Panchayati Raj Act, 1994 lays down liability of a member of the Panchayat for loss, wastage or misapplication of any money or property belonging to the Panchayat. If such loss or wastage or misapplication is consequence of the member's negligent act or misconduct, he shall also pay interest at the prescribed rate from the date of the loss, wastage or misapplication on the amount to be assessed under sub Section (2) or sub Section (3) of Section 216.

It is the Block Development and Panchayat Officer who can demand the amount due from a member on account of loss, wastage or misapplication but Section 216(2) of the Act provides that the member concerned has to be given an opportunity to explain his case.

In the present case, the Block Development and Panchayat Officer passed order Annexure P-3 on the basis of the inquiry conducted by Additional Deputy Commissioner (Annexure P-1) and the order of Director, Panchayat (Annexure P-2). Is the procedure valid?

We think that provisions of Section 216(2) of the Act has not been complied with in this case because the petitioner did not get an opportunity to explain his case before the assessment of the amount due from his was made by the Block Development and Panchayat Officer. Additional Deputy Commissioner can only conduct preliminary fact finding inquiry, if that is what the proceedings can be termed, for want of any other adequate phraseology. Annexure P-1 merely lays down that there was a prima facie case which required investigation but does not dispense with the inquiry. The provisions of law have not been complied with in the present case as the petitioner was denied a fair inquiry by Block Development and Panchayat Officer in terms of Section 216(2) of the Act.

Therefore, orders Annexures P-2 and P-3 are quashed. The matter is remanded back to the Block Development and Panchayat Officer, Mahilpur respondent 4 to conduct a fresh inquiry in terms of Section 216(2) of the Punjab Panchayati Raj Act. The inquiry shall be concluded within three months from the date of receipt of this order.

This petition is disposed of in the above terms.

**(K.S.GAREWAL)**  
**JUDGE**

**(AJAI LAMBA)**  
**JUDGE**

February 26, 2007  
RSK